

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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|------------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| -vs- |) | Case Nos. CR-20-295-F |
| |) | CIV-21-796-F |
| OSCAR DE JESUS LOPEZ, |) | |
| a/k/a Oscar DeJesus A-Lopez, |) | |
| a/k/a Oscar De Lopez, |) | |
| a/k/a Oscar De J. Pez, |) | |
| a/k/a Oscar De A-Pez, |) | |
| |) | |
| Defendant. |) | |

ORDER

On February 18, 2021, defendant pled guilty to a one-count superseding information charging him with being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). Subsequently, on June 30, 2021, the court sentenced defendant to a term of imprisonment for 120 months. Judgment was entered on July 2, 2021. Thereafter, on August 12, 2021, defendant, appearing *pro se*, filed a Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, alleging ineffective assistance of counsel for failure to “correct [his] [guide]lines” as promised. Doc. no. 51, ECF p. 5. Contemporaneous with his petition, defendant filed a notice of appeal challenging the court’s “[Judgment] and Sentence.” Doc. no. 52. The direct appeal is pending.

I.

Because defendant’s direct appeal is pending, the court concludes that defendant’s § 2255 petition is premature. *See, United States v. Hunter*, 458 Fed.

Appx. 732, 734 (10th Cir. 2012) (unpublished case cited as persuasive pursuant to 10th Cir. R. 32.1(A)). Defendant's direct appeal challenges his sentence. Should he prevail, a § 2255 motion would be unnecessary. The orderly administration of justice supports the dismissal of defendant's § 2255 petition without prejudice to refile. *Id.*

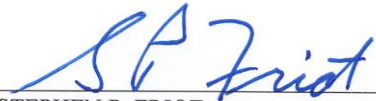
II.

Under Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts, a "district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." To obtain a certificate of appealability, defendant must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). The court concludes that defendant cannot make the required showing for issuance of a certificate of appealability. Therefore, the court finds that a certificate of appealability should be denied.

III.

Accordingly, defendant's Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (doc. no 51) is **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is **DENIED**.

IT IS SO ORDERED this 30th day of November, 2021.


 STEPHEN P. FRIOT
 UNITED STATES DISTRICT JUDGE